

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,  
HON. BARRINGTON D. PARKER,  
HON. PETER W. HALL,  
*Circuit Judges.*

---

Xiangqing Lin,  
*Petitioner,*

-v.-

No. 04-6367-ag  
NAC

Attorney General of the United States,  
*Respondent.*

---

FOR PETITIONER: Jeffrey C. Bloom, Andy Wong, New York, New York.

FOR RESPONDENT: Michael J. Sullivan, United States Attorney for the District of  
Massachusetts, Michael Sady, Assistant United States Attorney,  
Boston, Massachusetts.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1 Xiangqing Lin, through counsel, petitions for review of the BIA decision affirming the  
2 decision of Immigration Judge (“IJ”) Noel Brennan denying his applications for asylum and  
3 withholding of removal, and relief under the Convention Against Torture (“CAT”). We assume  
4 the parties’ familiarity with the underlying facts and procedural history of the case.

5 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8  
6 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency determination.  
7 *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep’t of Justice*,  
8 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual findings, including  
9 adverse credibility determinations, under the substantial evidence standard, treating them as  
10 conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. 8  
11 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

12 The IJ based her adverse credibility finding, in part, on Lin's demeanor, noting that during  
13 the merits hearing, Lin appeared to recite from a memorized script, testified in a halting manner,  
14 and often looked to his counsel and to the Court for a cue of some sort—*i.e.*, body language or  
15 facial expressions—to let him know that his answer, if he gave one, was the “correct” answer.  
16 The IJ gave three specific examples of such testimony: his responses to a series of questions  
17 regarding why he left China, his first contact with family planning officials, and why he waited  
18 until after the alleged abortion to confront the officials. The IJ's determination here is supported  
19 in the record and is a reasonable basis for finding Lin not credible. *See Tu Lin v. Gonzales*, 446  
20 F.3d 395, 400-02 (2d Cir. 2006); *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73-74 (2d Cir. 2004).  
21 Moreover, the IJ reasonably discounted the suggestion by Lin's counsel that Lin's halting manner  
22 was due, in part, to his few years of education—a claim Lin reiterated in his brief to this Court.

1 Although Lin claimed to have had only six years of formal schooling, Lin pointed to nothing in  
2 the record, and presented no evidence on appeal or in his brief to this Court, to show that a  
3 person of limited or even no formal education is somehow less able to articulate a coherent  
4 narrative of his or her alleged persecution.

5 The IJ also determined Lin not to be credible because of discrepancies within and  
6 between the two household registers he submitted, and because when he was confronted with  
7 these discrepancies, his answers were confusing and unresponsive. The IJ's determination is  
8 based on substantial evidence in the record and goes to the heart of Lin's claim that he had a  
9 relationship with or was married to his alleged wife. The IJ further found Lin not credible  
10 because of his shifting testimony regarding the mode of transportation he and his alleged wife  
11 used to return from his uncle's house to his parents' house when the couple purportedly went to  
12 report to the family planning officials for an abortion. The IJ also determined Lin to be  
13 incredible because of inconsistencies between his asylum application and his testimony regarding  
14 who called him at his uncle's house to tell him that family planning officials had come to his  
15 parents' house in search of his wife, and regarding whether Lin's mother told the officials that her  
16 daughter-in-law was pregnant. Finally, the IJ found Lin incredible because he testified  
17 inconsistently regarding the conditions of the one-week detention that was imposed on him for  
18 arguing with the family planning officials.

19  
20 Since Lin did not raise his claims for withholding of removal and CAT before the BIA,  
21 and does not raise those claims here, those claims are unexhausted and waived. *See* 8 U.S.C. §  
22 1252(d)(1); *Gill v. INS*, 420 F.3d 82, 86 (2d Cir. 2005); *Yueqing Zhang v. Gonzales*, 426 F.3d  
23 540, 542 n.1, 546 n.7 (2d Cir. 2005).

1           For the foregoing reasons, the petition for review is DENIED. Having completed our  
2 review, any stay of removal that the Court previously granted in this petition is VACATED, and  
3 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending  
4 request for oral argument in this petition is DENIED in accordance with Federal Rule of  
5 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

6  
7  
8  
9           FOR THE COURT:  
10          Roseann B. MacKechnie, Clerk

11          By: \_\_\_\_\_  
12